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ABSTRACT

This paper discusses copyright issues for educators. The Fair Use Doctrine is described, focusing on the following points that must be evaluated before determining Fair Use: (1) purpose and character of work; (2) nature of the copyrighted work; (3) amount and substantiality; and (4) effect upon potential market. Other topics covered include faculty perspectives of copyright (e.g., reserve materials, non-print materials, Internet, videotaping, and course packets), student perspectives of copyright, getting copyright permission, and watching for certain legal developments. A selected list of readings and URLs is included. (MES)

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Copyright: Fair Use or Foul Play

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Have you lost track of what is going on in the world of copyright? Misconceptions of fair use in copyright abound. To avoid legal hassles and lawsuits, people must understand copyright law/guidelines and realize that as individuals they are subject to lawsuits as individuals, as well as opening up their institutions to legal repercussions. Myths, examples and solid information will be shared and discussed.

Copyright in the United States is not a new issue, since the first law actually dates back to 1790. What is new in the area of copyright law is the realization that with the advent of the information age knowledge of copyright is becoming even more critical. Today, people in all professions need to have a complete understanding of copyright. Currently, the Copyright Act of 1976 and the Digital Millennium Copyright Act are the most important pieces of legislation to understand.Copyright Myths/Misconceptions

When working with copyright, it is important to distinguish between myth and fact. Some of the myths that many people subscribe to include: if it is on the Internet, it is not copyrighted; if the copyright notation is not present, the material is not copyrighted; if the material is for educational purposes, copyright does not apply; and any material can be included on a web page without permission. It is time to dispel/correct these myths. It is critical to realize that the copyright notation is no longer required. So it is more judicious to acknowledge that everything is copyrighted unless otherwise noted. It is also important to be aware that while the Internet is the "wild side" of the Information Age, copyright still applies. Finally, "Fair Use," although it covers educational purposes, does not give people unlimited opportunities, but rather, it provides guidelines for use within the educational setting.

Fair Use for Educators

Fair Use for educators gives us a balance between access to materials/information and protection for creators. This is one of the most frequently misunderstood and

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misconstrued areas of copyright. The following points comprise the Fair Use Doctrine, and all four points must be evaluated before determining Fair Use:

- Purpose and character of work
- Nature of the copyrighted work
- Amount and substantiality
- Effect upon potential market.

Purpose and character of work
Congress favors educational use over commercial use when determining Fair Use. It is more likely acceptable when the copyrighted work is altered into something new or creative, including quotations or graphic images into a PowerPoint presentation. However, alteration does not need to occur to still allow for use under this point.

Nature of the copyrighted work
Works that are factual in nature are less likely to be challenged under this point in the Fair Use Doctrine. Fiction or entertainment types of copyrighted materials can be more problematic and may require special consideration. Another example may be consumable materials such as workbooks; these are less likely to meet the test of Fair Use than printed factual texts.

Amount and substantiality
Amount is measured both quantitatively and qualitatively. Although no EXACT quantity exists in the law, there are some suggested guidelines to follow, often referred to as the "Ten Percent Rule." Note the following suggested guidelines:

- SINGLE copy of a chapter in a book; article from a periodical/newspaper, short story, short essay, short poem; illustration from book, periodical, or newspaper.
- ONE illustration from book/periodical; 250 words from poem, 10% of a piece of prose up to 1,000 words.
- No more than ONE short poem, article, story, essay, or TWO excerpts from the same author.
- MULTIPLE COPIES cannot exceed the number of students in the class, nor more than NINE instances of multiple copyright for one course during one class term.

IMPORTANT consideration/factor: if the multiple copy request meets the "test of spontaneity" (didn't have time THIS FIRST TIME to get copyright permission), the multiple copies can be made; any further duplication/distribution needs permission.Effect on Potential Market. Effect on the potential market is a bit more complicated than the other three criteria. Termed the "fuzzy area," a generalization can be whether it impacts the copyright holder's potential for revenue. A person cannot create or replace an anthology or compilation of copyrighted works; this is an issue where faculty and copying services frequently have conflicting agendas. Also, effect on potential market does not change if the work is out of print; copyright permission still must be requested by contacting the publisher (in most cases).

Faculty Perspectives of Copyright

Faculty can protect themselves, the institution, and their students by understanding and following copyright laws and guidelines. For example, apply the Fair Use Doctrine as outlined above, with the understanding that one copy of a copyrighted printed document can be made for personal use and files.

Reserve materials in the library is an issue which many faculty overlook, but the librarians must comply with copyright law. For example, materials may be put on reserve WITHOUT PERMISSION for only one term; this includes all types of materials (i.e. books, copies of articles, multimedia materials, etc.). In subsequent terms, either purchase of the materials or permission must occur. Electronic reserves opens a new area for copyright law to be interpreted and implemented. The same requirement regarding use for one term without permission is being interpreted by many people as applying. Institutions and publishers have begun to address this area, and various electronic access for copyright permissions is now available.

Non-print materials (videotape/music) follow a prescribed set of guidelines. The finished product must be for educational purposes, used that instructor's own classes, falls within the two-year limit on materials and use, includes face-to-fact instruction or directed self-study, and may be included in professional portfolios and peer presentations. With all of the above, the Ten Percent Rule (a gentleperson's agreement, not a law) applies to use WITHOUT PERMISSION.

- Motion media – 10% or 3 minutes, whichever is less.
- Text material – 10% or 1000 words, whichever is less
- Music, lyrics, and music video – up to 10%, but no more than 30 seconds.
- Illustrations/photographs – May be used in their entirety, but no more than 5 images by the same artist/photographers. From a collective work, 10% or 15 images, whichever is less.

The WWW/Internet still requires copyright law to be followed; however, linking to other sites/URLs is allowable. Although asking permission to link is not required, it is a common courtesy and is frequently requested from the site creator.

Off-air videotaping adds its own dimension to copyright. We usually think of this type of recording as making a copy of a television program. There are, however, certain restrictions and rules which must be followed. An off-air video recording is designed for one-time instruction, and the tape may be retained for 45 days and then erased. This is an area about which faculty are not aware or elect to conveniently ignore/forget. The copyright notation must always still be present on the copy. After 45 days, either permission should be sought or a copy of the work should be purchased. In respect to off-air videotaping there are certain restrictions. You may not tape premium channels (HBO, Showtime), alter original content, exclude copyright notice, record in anticipation of need, or retain after 45 days, unless indicated otherwise, and may include, agreements with certain channels or U.S. government works.

Use of videotapes is yet another issue. The tapes must be curriculum based and relevant to the course objectives; shown only to students; shown by either a teacher, student, or guest presenter; and shown in an academic setting where no fees are being charged to view the videotape.

Finally, as mentioned earlier, materials/course packets continue to be perceived as an annoying hurdle to be overcome. The rule of thumb is quite uncomplicated – if faculty want to include copyrighted materials within a course packet, permission must be obtained and appropriate fees must be paid. The "test of spontaneity" does not apply with course packets.

Student Perspectives of Copyright

The majority of copyright law, which covers faculty, applies also to students. Students still must adhere to Fair Use, the two-year time limit on materials, and the 10% rule on portion limits. However, students have a little more latitude when creating their portfolios or other job-seeking materials, which are related to a specific course where creation of materials was a requirement and students did not request permission at that time. For example, if a student is required to create a web page for a course and uses copyrighted images, the project can be retained for two years. This has been a major source of confusion and will continue to be so until more concrete guidelines are established.

Getting Copyright Permission

Getting copyright permission to use materials may be easy or it may be difficult. A rule of thumb – do as you are instructed. Most print and non-print material will provide the contact name and address (sometimes telephone/fax number) of an office or person who can authorize permission to use copyrighted materials. For print materials, the requester should identify the author, name of the material (title and source), page numbers, number of students, term(s) to be used. Be prepared to pay for copyright permission, although some publishers will not charge a fee. Some publishers have elected to have all requests handled through Copyright Clearance Center or other designated source. Always maintain a detailed paper trial of any communication regarding copyright.

Things to Watch

Continuing breaking news will be seen very soon regarding Napster, Uniform Computer Information Transactions Act (UCITA), distance education, and the Digital Millennium Copyright Act update. As continuing legislation and lawsuits evolve, copyright law as we know it today will be clarified without losing Fair Use and thereby undermining the pillar of education: access to and use of information for research and teaching purposes.

Selected List of Useful Readings

Bruwelheide, Janis H. The Copyright Primer 2nd ed. American Library Association, 1995.

Halbert, Debora J. Intellectual Property in the Information Age: The Politics of Expanding Ownership Rights. Westport, CT: Quorum, 1999.

Heinich, Robert, Michael Molenda, James D. Russell and Sharon E. Smaldino. Instructional Media and Technologies for Learning. 6th ed. Columbus: Merrill, 1999.

Sinofsky, Esther R. A Copyright Primer for Educational and Industrial Media Producers. 2nd ed. Association for Educational Communications and Technology, 1994.

Strong, William S. The Copyright Book: A Practical Guide. 5th ed. Cambridge, MA: MIT Press, 1999.

Selected List of Useful URL's

U. S. Copyright Office - http://lcweb.loc.gov/copyright/

Educational Fair Use Guidelines: A Summary of Concern - http://www.arl.org/info/frn/copy/mmedia.html

The University of Texas Copyright Site - http://www.utsystem.edu/ogc/intellectualproperty/cprtindx.htm

Copyright Clearance Center - http://www.copyright.com/

AcqWeb - http://acqweb.library.vanderbilt.edu/

UCITA Concerns – American Library Association - http://www.ala.org/washoff/ucita/advocacy.html